

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**ALLEN SCHROD, individually and as  
conservator for SHIRLEY SCHROD**

**PLAINTIFFS**

**v.**

**CASE NO. 3:20-cv-289-MPM-JMV**

**INTERNATIONAL PAPER COMPANY**

**DEFENDANT**

**ORDER**

This matter is before the court on Plaintiffs' Motion to Substitute Party Plaintiff [89] filed on April 12, 2023. Defendant filed its Response [90] on April 17, 2023, in which it indicated that it does not oppose Plaintiffs' motion. Having reviewed the motion, and noting that it is unopposed, the court finds the motion well taken and is due to be granted.

Plaintiffs, including Shirley Schrod, originally filed their Complaint [2] in the Circuit Court of DeSoto County, Mississippi, on September 11, 2020. Defendant removed [1] this case to the Northern District of Mississippi on November 3, 2020. On December 6, 2021, this Court entered an Order [47] granting leave to file a second amended complaint, which reflected that Allen Schrod had been appointed conservator for his wife Shirley Schrod and updated the style of the case accordingly. On August 2, 2022, the case was dismissed after notice to the court that the case was resolved due to settlement [77].

Thereafter, on January 19, 2023, the defendant filed a Suggestion of Death [78], in which Defendant indicated that, upon information and belief, no executor or administrator had been appointed on Shirley Schrod's behalf after her passing on May 7, 2022, thus preventing the parties from properly finalizing their settlement agreement. In the instant motion, Plaintiffs filed

proof [89-1] that, as of April 4, 2023, Allen Schrod has been appointed administrator of Shirley Schrod's Estate.

Federal Rule of Civil Procedure 25(a)(1) states:

Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).

Here, the motion for substitution of Allen Schrod, as Administrator of Shirley Schrod's Estate, to replace Allen Schrod, as conservator for Shirley Schrod, is timely and unopposed. Additionally, there is no question that Plaintiff Shirley Schrod's claim for state law negligence survives her passing.<sup>1</sup>

THEREFORE, the Court does find that the [89] motion is granted, and Allen Schrod, as Administrator of Shirley Schrod's Estate, shall substituted in the place and stead of Allen Schrod, as conservator for Shirley Schrod. The Clerk's Office is hereby directed to correct the style of the case to name as Plaintiffs Allen Schrod, individually and as Administrator of the Estate of Shirley Schrod.

**SO ORDERED** this, the 18th day of April, 2023.

/s/ Jane M. Virden

**UNITED STATES MAGISTRATE JUDGE**

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<sup>1</sup> See MISS. CODE ANN. § 91-7-233 ("Executors, administrators, and temporary administrators may commence and prosecute any personal action whatever, at law or in equity, which the testator or intestate might have commenced and prosecuted.") and MISS. CODE ANN. § 91-7-237 ("When either of the parties to any personal action shall die before final judgment, the executor or administrator of such deceased party may prosecute or defend such action, and the court shall render judgment for or against the executor or administrator.").